

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

AMERICAN NATIONAL PROPERTY  
AND CASUALTY COMPANY, a foreign  
corporation,

Plaintiff,

v.

Case No. CIV-2007-01048 JOB/RHS

FRANCES WOOD,

Defendant.

**SUPPLEMENT TO EIGHTH JOINT STATUS REPORT**

COMES NOW Plaintiff American National Property and Casualty Company ("ANPAC"), by and through its attorneys of record, Montgomery & Andrews. P.A. (Paul E. Houston, Esq. and Brian T. Judson, Esq.), and, in accordance with the Court's June 4, 2010 Minute Order requesting clarification of the Eighth Joint Status Report state as follows:

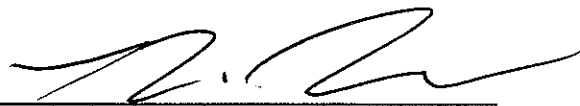
1. In response to this Court's June 4, 2010 Minute Order, the parties clarify that the "Court" referenced in the last sentence of Paragraph 2 of the Eighth Joint Status Report is the State District Court. With the dismissal of Defendant Frances Wood, which is pending, there will be no further claims remaining in the state court proceeding.

2. As requested, a copy of the partial transcript of the April 29, 2010 proceedings before Judge Ortiz is attached hereto.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By



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By my signature below, I hereby certify  
that a true and correct copy of the  
foregoing pleading was served by the  
Court's CM/ECF system to Leof T.  
Strand, Esq., Law Offices of Leof T.  
Strand, P.O. Box 91597, Albuquerque,  
NM 87199-1597, on this 18<sup>th</sup> day  
of June 2010.



PAUL E. HOUSTON, ESQ.

BRIAN T. JUDSON, ESQ.

1 **FIRST JUDICIAL DISTRICT COURT**  
2 **COUNTY OF SANTA FE**  
3 **STATE OF NEW MEXICO**

4 **FRANCES WOOD,**

5 Plaintiff,

6 vs.

Case No. D-0101-CV-200703063

7 **AMERICAN NATIONAL PROPERTY**  
8 **AND CASUALTY COMPANY, et al.,**

9 Defendant.  
10

11 **(Partial) TRANSCRIPT OF PROCEEDINGS**

12 On the 29th day of April, 2010, at  
13 approximately 1:30 PM, this matter came on for  
14 hearing before the HONORABLE RAYMOND Z. ORTIZ, Judge of  
15 the First Judicial District Court, State of New Mexico,  
16 Division III.

17 The Plaintiff appeared by Counsel of Record, LEOF  
18 T. STRAND, Law Offices of Leof T. Strand.

19 The Defendant appeared by Counsel of Record, BRIAN  
20 T. JUDSON, Montgomery & Andrews.  
21  
22  
23  
24  
25

1 THE COURT: The matter I'm calling is  
2 D-0101-CV-200703063, Wood vs. American National, et al.  
3 Please state your appearances for the record.

4 MR. STRAND: William Strand for Frances Wood.

5 THE COURT: All right, thank you.

6 MR. JUDSON: Brian Judson for American National  
7 Property and Casualty Company.

8 THE COURT: All right, so this matters comes  
9 before the Court on some Motions for Summary Judgment  
10 as well as for a Scheduling Conference.

11 Let me just ask a preliminary question with  
12 respect to the Defendant's Motion for Summary Judgment,  
13 I note from having reviewed the file that there is a  
14 ruling by Judge Hall on January 6th, basically an Order  
15 granting Summary Judgment already in this case.

16 How does that impact the Defendant's motion?

17 MR. JUDSON: Your Honor, I don't think we, the  
18 Defendants actually have, other than that, a pending  
19 motion. Mr. Strand had actually prepared a fairly  
20 excellent history of the rather convoluted path this  
21 case has trod.

22 As you may know, we initially filed, and Mr.  
23 Strand addressed this --

24 THE COURT: Right, you've got a parallel case  
25 in Federal Court.

1 MR. JUDSON: Right. We filed, as Defendants we  
2 filed a Motion for Summary Judgment on our claim for  
3 declaratory judgment. That Motion for Summary Judgment  
4 was denied.

5 We then filed a Motion for Summary Judgment on  
6 all of the extracontractual claims, and that's the  
7 motion that was granted.

8 It is my understanding at this point that the  
9 only motion before the Court is Plaintiff's Motion for  
10 Summary Judgment.

11 THE COURT: And that's why I asked the question  
12 about Judge Hall's ruling on January 6th.

13 MR. JUDSON: I think his ruling speaks to the  
14 extracontractual claims, the bad faith, the breach of  
15 the Unfair Trade Practices Act.

16 I think the only issue before the Court is the  
17 reformation of the contract issue, the determination as  
18 to whether or not Ms. Wood is entitled to UM/UIM  
19 coverage in an amount equivalent to or underlying  
20 bodily injury coverage despite the fact that she  
21 selected lower limits, and I would be so candid as to  
22 suggest that with the advent of the Romero vs.  
23 Progressive case, which was published middle of last  
24 month, the answer to that has probably been reached,  
25 although cert has been granted on that case.

1 THE COURT: All right, let me hear from you,  
2 Mr. Strand.

3 MR. STRAND: Your Honor, there are some  
4 housekeeping issues, if I might. May I approach?

5 THE COURT: Sure.

6 MR. STRAND: This is a case history that I will  
7 go through, and these are a copy of the Clerk's minutes  
8 of the last status conference with Judge Browning,  
9 where he has directed Mr. Judson and I to do certain  
10 things, and it is rather unusual, but because a judge  
11 has directed it, we feel that we should go forward with  
12 it.

13 THE COURT: Normally that's the protocol.

14 MR. STRAND: Yes, well, you know, on a case  
15 history -- may I speak from here, your Honor?

16 THE COURT: Sure.

17 MR. STRAND: ANPCC -- when I say ANPCC, I mean  
18 ANPCC and Leona Wagner -- ANPCC filed a Dec action in  
19 US District Court on October 17, '07.

20 Then after we were finally served or prior  
21 thereto, Frances Wood filed a complaint against ANPCC  
22 in this district for Dec action, reformation of  
23 contract, breach of contract, insurance bad faith,  
24 negligence, damages for personal injury and unfair  
25 trade insurance practices.

1           Shortly thereafter, January 4th, Frances Wood  
2       filed a Motion to Dismiss her stay the Dec action in  
3       the Federal Court, and ANPCC filed a similar motion  
4       here in the State Court as to our Dec action on same  
5       date.

6           On March 21, '08, Judge Browning entered a  
7       Memorandum of Opinion Order denying Frances Wood's  
8       Motion to Dismiss her Stay of Proceedings. What he did  
9       do, however, is he left some light on and said that he  
10      would revisit it if the State Court assumed  
11      jurisdiction or continued jurisdiction, you see he was  
12      aware of the deck action.

13          I would state that the experience that we've  
14      had as lawyers in New Mexico when there has been a  
15      companion State Dec action, the Federal judges  
16      invariably have refused to exercise discretion as to  
17      assume jurisdiction, it is rather unusual for them to  
18      do that.

19          We had a hearing before Judge Hall. Judge Hall  
20      felt, stated in the record that this was, in his  
21      opinion, exclusively a state issue and the State judge  
22      had the obligation to go forward with it, and entered  
23      an Order on May 2nd, '08, denying ANPCC's Motion to  
24      Dismiss to state.

25          We then filed a Motion for Reconsideration,

1 Frances Wood did, in Federal Court of the Memo Opinion,  
2 where Judge Browning denied our Motion to Stay or  
3 Dismiss.

4 That hearing was actually held on July 31st,  
5 '08, but we didn't get a decision until the following  
6 January 29th, when Judge Browning entered a Memo  
7 Opinion and Order granting in part, denying in part our  
8 Motion for Reconsideration.

9 He stayed it but didn't dismiss it, and he  
10 ordered us that we would have every 90 days or 120  
11 days, I can't remember what it was, a status report  
12 back to him which we've done all through this time.

13 On July 29th, '08, Judge Hall entered an Order  
14 denying ANPCC's Motion for Summary Judgment regarding  
15 our Dec action and the reformation of the contract, so  
16 that motion has been taken care of.

17 On August 7th, ANPCC filed a Motion for Summary  
18 Judgment regarding Frances Wood's claims for bad faith  
19 in violation of the New Mexico Insurance Code and  
20 Unfair Trade Practices Act. On January 6th, '09, Judge  
21 Hall entered an Order granting that motion.

22 Then on the 29th, January 29th, '09, Judge  
23 Browning entered that Memo where he stayed the Federal  
24 action.

25 On February 9, '09, Frances Wood filed a Motion



1 for Summary Judgment in this Court directed to Count 1,  
2 the Dec action and Count 2, the reformation of the  
3 contract.

4 That was fully briefed and argued on April  
5 21st, '09, before Judge Hall. Judge Hall withheld  
6 ruling and we can only guess -- Judge Hall ruled on a  
7 lot of these cases and he was very familiar with the  
8 issue.

9 Going back to 2001, he ruled in a case  
10 involving ANPCC and these defense counsel that the  
11 documents didn't meet the requirement of the statute  
12 and the regulation on offer of rejectment (sic), so he  
13 was very familiar with the issue.

14 This Romero vs. Progressive case that Mr.  
15 Judson referred to was Judge Hall's case. In fact, he  
16 told us that this issue, after we were arguing it, he  
17 said, gentlemen, this issue is going up, it is up there  
18 already.

19 I think maybe he was waiting for the Romero  
20 Opinion to be published. He retired in December '09,  
21 and the Romero Opinion wasn't published until April of  
22 '10. That could be an explanation.

23 Anyway, in January of this year, Judge Hall  
24 called for a status conference that Mr. Johnson's  
25 partner, Paul Houston and I attended.

1 THE COURT: In January of this year?

2 MR. STRAND: Yes.

3 THE COURT: Well, that's not possible, he was  
4 already retired.

5 MR. STRAND: No, no, Judge Browning, I'm sorry.

6 THE COURT: Okay.

7 MR. STRAND: It was maybe February, February I  
8 think it was, and at the end of that status conference,  
9 Judge Browning made the statement that appears in the  
10 Clerk's minutes, and now mind you, one of the arguments  
11 that I offered to Judge Hall at the very beginning on  
12 this Motion to Stay and Dismiss the State Action, is  
13 that I was in a real tough situation, because there was  
14 a lot of litigation going on in this issue in the State  
15 forum, and this issue was going to be resolved by our  
16 Appellate courts one way or the other.

17 If I was stuck over in the Federal system and  
18 that judge guessed wrong as to what the State court  
19 decided, we were precluded from State jurisprudence  
20 because it was res judicata, it was barred.

21 Judge Hall realized that, and I think that was  
22 one of the reasons that he said this is a State issue  
23 and it should be resolved in State Court. This was  
24 very important to the Plaintiff.

25 Now, as you can tell, the catch-22 we would be

1 in, well Judge Browning says, need to get the case  
2 going, have deferred to State, they do not seem to be  
3 moving it along as the Federal Court does -- well, he  
4 took seven months to rule on our Motion for  
5 Reconsideration.

6 Will give 30 days to get judge sorted out. I  
7 explained to him it started out with Judge Hall. When  
8 he retired it went to Judge Sanchez. Judge Sanchez  
9 retired, it went to Judge Singleton. She recused  
10 herself because she was part of the Montgomery &  
11 Andrews Firm, and then it was in limbo, and the rumor  
12 was that Judge Ortiz would get Judge Sanchez' docket,  
13 but not until the new judge was appointed.

14 So we were in this limbo period when we were  
15 before Judge Browning, and I explained to him I have a  
16 request for status conference in, but we don't have a  
17 judge to hear it at the moment, but we will be having  
18 one. So he says okay, as if Judson and I have --

19 THE COURT: So where are you now on Page 2 of  
20 this --

21 MR. STRAND: Yes, Page 2. The Court: Will  
22 give 30 days to get judge issue sorted out. 30 days  
23 thereafter, parties will need to send a letter or  
24 pleading to new judge providing him or her with this  
25 Court's Opinion, and inquire if new judge wishes, as

1 Judge Hall did, to decide the issue.

2 It goes on, experience has been State Court is  
3 always happy to have Federal Court decide these issues,  
4 encourages counsel to send the new judge 3.108, 129-09  
5 Opinions, but definitely want them to send a letter.  
6 Want that to be accompanied by a request for conference  
7 with the new judge, then parties can provide this Court  
8 with a copy of the transcript from the hearing and this  
9 Court can determine if exercising jurisdiction will  
10 cause friction.

11 As you can see, we're very far down the road in  
12 the state forum, and a lot of decisions have been made  
13 and it would create considerable friction and problems  
14 for us now to have the State Court drop the  
15 jurisdiction or stay it and put us back into the  
16 Federal Court, we virtually would have to repeat  
17 everything for really no reason.

18 I believe at the end of this hearing, this  
19 matter probably will be resolved based upon the case  
20 law that has come down since a year ago when we were  
21 here arguing this same motion.

22 So I would, it was necessary to have this,  
23 present this to you. I do have the two Opinions if you  
24 would like to read them, but it is like 30, 40 pages  
25 long, but I will be glad to give them to you if you

1 feel it is necessary.

2 But I certainly would encourage the Court to  
3 continue with exercising jurisdiction and moving on to  
4 our Motion, which hopefully will resolve the case.

5 THE COURT: All right, thank you counsel.

6 MR. JUDSON: Judge, if I might. I would add I  
7 also have copies of the Memorandum of Opinion and Order  
8 of the Court with me. You probably don't want to read  
9 them right now, they are very lengthy, but I have both  
10 of them with me.

11 This case actually got set for trial in January  
12 2008, and at that time Mr. Strand and I agreed that  
13 given the disposition of, the denial of our Motion for  
14 Summary Judgment on the declaratory judgment action and  
15 the extreme likelihood that Judge Hall was going to  
16 rule in Mr. Strand's favor on his Motion for Summary  
17 Judgment as well as the dismissal of the  
18 extracontractual claims, we agreed that we would  
19 dismiss Leona Wagner out of the case.

20 So the only issues before the Court were going  
21 to be the equalization claim, and that that could be  
22 determined on the briefing, we probably wouldn't even  
23 need a hearing given what was obviously Judge Hall's  
24 position on it and what presumably I have to say now is  
25 the law of the State of New Mexico, although it wasn't

1 at the time.

2 THE COURT: That it would be controlled by this  
3 Romero case?

4 MR. JUDSON: Correct, which to my mind strongly  
5 reflects opinions that Judge Hall expressed at various  
6 times when I appeared in front of him.

7 I think that in many ways that opinion is a  
8 very clear reflection of how he felt about these  
9 issues. So we agreed that a trial would be unnecessary  
10 and wasteful given that we pretty much knew how it was  
11 going to come out, and what we were really interested  
12 in at that point was a final judgment so that we could  
13 appeal it and get this case moving down the road.

14 In the meantime, Plaintiff is going to need to  
15 file, actually file a claim, a UM claim, because there  
16 has never been a claim filed that was the basis of our  
17 Motion for Summary Judgment on the extracontractual  
18 claims, and we'll either arbitrate it under the  
19 contract, reach some kind of a settlement or go to  
20 trial or whatever we need to do with that, but I think  
21 that's really where we are going in this case.

22 I think both of us, maybe I'm speaking out of  
23 turn, but I think what both of us would like for this  
24 matter is some kind of, dismissal of Wood, or not Wood  
25 of Wagner, a final disposition on the equalization

1 claim and a judgment we can take to the Court of  
2 Appeals so that we can get this case over with.

3 THE COURT: Okay. Mr. Strand?

4 MR. STRAND: Sure, I'm willing to proceed with  
5 the presenting of the Motion for Summary Judgment on  
6 behalf of the Plaintiff as to Counts 1 and 2. I'm  
7 sorry, I guess I'm getting ahead.

8 THE COURT: Well, no, I mean I take it both  
9 counsel want some direction from this Court as to  
10 whether I'm going to proceed and continue to assert  
11 jurisdiction in this Court or whether I would defer  
12 basically to Judge Browning in the Federal Court,  
13 correct?

14 MR. STRAND: Correct.

15 THE COURT: Well, from my perspective, since  
16 Judge Hall previously asserted that the State would go  
17 forward in this case and it is a state issue, from my  
18 perspective that's the law of the case, so I fully  
19 intend to continue with that particular position.

20 I mean I think Judge Hall's ruling in that  
21 respect is well taken, so I will continue to assert  
22 jurisdiction. You can advise Judge Browning of that  
23 however you choose to, either by getting a transcript  
24 of this hearing or just advising him by joint letter or  
25 status conference of what this Court's position is.

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